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**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES HOLTON,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0509-CR-894
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Evan Goodman, Judge
Cause No. 49F15-0506-FD-92776

August 23, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Charles Holton, a/k/a Clayton Turner, (“Holton”) appeals from a conviction of Class D felony theft by a jury in Marion Superior Court. He raises the following issues:

- I. Whether the trial court abused its discretion when it admitted testimony that Holton displayed a knife;
- II. Whether sufficient evidence supports his conviction; and,
- III. Whether his sentence is appropriate.

Concluding that Holton has waived his claim that the trial court abused its discretion in the admission of evidence, that sufficient evidence supports his conviction, and that his sentence is appropriate, we affirm and remand.

Facts and Procedural History

On June 1, 2005, Holton entered a Meijer store located on 96th Street in Indianapolis. Luke Baskett (“Baskett”), a Meijer loss prevention officer, observed Holton, who immediately proceeded to the small appliances section of the store. Holton selected a coffeemaker priced at \$99.99 and placed it in the child seat of his cart. Placing the coffeemaker so that the UPC label printed on the box was facing him, Holton then proceeded to the grocery area of the store. Baskett observed Holton reach into his pocket and then place his cupped hand over the UPC label of the coffeemaker. Baskett then saw Holton “smooth over [the area] probably two or three times.” Tr. p. 59. Holton quickly walked to the produce section, selected a deli chicken, and proceeded to the self-scan checkout where he made his purchase with a gift return card.

Baskett followed Holton into the parking lot, showed his security badge, and asked Holton to return to the store. Holton refused. When Baskett told Holton that sheriff’s deputies were on their way, Holton let go of his shopping cart and walked away. Baskett

followed Holton, who then pulled a knife from his pocket and waived it at Baskett. Holton got into his Crown Victoria and pulled out of the parking lot. When Marion County Sheriff's deputies arrived shortly thereafter, Baskett pointed out Holton's car, which was stopped at a stoplight near the store. The deputies then stopped and arrested Holton. Meanwhile, Meijer employees recovered Holton's abandoned shopping cart, which contained the coffeemaker, chicken, and a receipt indicating that the coffeemaker scanned at a price of \$9.99.

The State charged Holton with Class D felony theft. Prior to trial, the trial court denied Holton's motion in limine seeking to prevent reference to the knife. A jury trial commenced on August 17, 2005. At trial, Holton objected when the State sought to introduce the knife into evidence. The trial court did not allow the knife into evidence, but did permit discussion of the knife. Tr. p. 101. The jury convicted Holton of Class D felony theft. The trial court conducted a sentencing hearing on September 2, 2005, and sentenced Holton to three years with six months suspended. Holton now appeals.

Discussion and Decision

I. Admission of Evidence

First, Holton argues that the testimony regarding the knife should have been excluded. The trial court sustained Holton's objection to the admission of the knife itself. However, Holton did not object to testimony about his actions with the knife. See Tr. pp. 63-64, 99. As a general rule, failure to object at trial results in waiver of an issue for purposes of appeal. Herron v. State, 801 N.E.2d 761, 765 (Ind. Ct. App. 2004). Therefore, Holton has waived this argument.

II. Sufficiency

Next, Holton contends that the State failed to present sufficient evidence to support his theft conviction. Our standard of review for sufficiency claims is well settled. We neither reweigh the evidence nor judge the credibility of the witnesses. Cox v. State, 774 N.E.2d 1025, 1029 (Ind. Ct. App. 2002). We only consider the evidence most favorable to the judgment and the reasonable inferences that can be drawn therefrom. Id. Where there is substantial evidence of probative value to support the judgment, it will not be disturbed. Armour v. State, 762 N.E.2d 208, 215 (Ind. Ct. App. 2002), trans. denied.

In order to convict Holton of Class D felony theft, the State was required to prove that he knowingly or intentionally exerted unauthorized control over the property of Meijer with the intent to deprive Meijer of any part of its value. See Ind. Code § 35-43-4-2 (2004). Holton argues that the State failed to establish that he intended to deprive Meijer of the coffeemaker's value.

Baskett testified the he observed Holton reach into his pocket, place his hand over the UPC label on the coffeemaker's box, and then smooth his hand over the label several times. Tr. pp. 58-59. In addition, the State presented evidence that the coffeemaker Holton purchased had a UPC label sticker over the UPC label printed directly on the box. Tr. p. 67. The State also presented evidence that Holton paid \$9.99 for the coffeemaker. From this evidence, the jury could reasonably infer that Holton placed a false UPC label on the box with the intention of buying the coffeemaker at a substantially reduced price. Moreover, the jury could also consider evidence that Holton refused to go back into the store, abandoned his purchases in the parking lot, and drove off. See Dill v. State, 741

N.E.2d 1230, 1232 (Ind. 2001) (“Flight and related conduct may be considered by a jury in determining a defendant’s guilt.”). Sufficient evidence supports Holton’s theft conviction.

III. Sentencing

Finally, Holton argues that his three-year sentence is inappropriate. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court’s decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2005); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied.

Here, the trial court found as mitigating circumstances that a long term of imprisonment would present a hardship to Holton’s family and that Holton had “some physical and mental problems which aren’t able to be addressed or it is not severe that it appears to me...it doesn’t appear that they are so severe that they could not be handled in prison.” Tr. p. 150. As aggravating circumstances, the trial court looked to Holton’s criminal history, which consisted of sixteen convictions including four felonies, and the fact that Holton committed this offense while on probation. Tr. p. 152. The court then sentenced Holton to three years with six months suspended. Under these facts and circumstances, we conclude that Holton’s sentence is appropriate.

Finally, the State points out that because Holton committed the theft at issue while on probation for another conviction, his sentence is required to be served consecutive to his sentence on the prior conviction. See Ind. Code § 35-50-1-2(d) (2004 & Supp. 2006). The Order of Judgment of Conviction states that Holton was on probation at the time of

the offense, but fails to order his sentence be served consecutively. Appellant's App. pp. 14-15. Therefore, we remand to the trial court for a determination as to whether mandatory consecutive sentencing is required.

Conclusion

Holton waived his argument regarding the admission of testimony about his possession of a knife; sufficient evidence supports his conviction of Class D felony theft; and his sentence is appropriate. Holton's sentence may be required to be served consecutive to his sentence for a prior conviction.

Affirmed and remanded for a determination as to whether mandatory consecutive sentencing is required.

FRIEDLANDER, J., and BARNES, J., concur.